

NOTICE OF INTENT

Department of Environmental Quality
Office of Water Resources
Municipal Facilities Division

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Municipal Facilities Division regulations, LAC 33:IX.Chapter 22 (Log #WP027).

This proposed rule establishes requirements for participation in the Drinking Water Revolving Loan Fund program as authorized by the Safe Drinking Water Amendments of 1996 and Act 480 of the 1997 Regular Session of the Louisiana Legislature. The Drinking Water Revolving Loan Fund will provide financial assistance to qualified borrowers for the construction of eligible drinking water facilities. The rule provides information relating to eligibility of projects, application requirements, environmental reviews, and loan conditions. The basis and rationale for this rule is to implement the Drinking Water Revolving Loan Fund program as authorized by the Safe Drinking Water Amendments of 1996 and Act 480 of the 1997 Regular Session of the Louisiana Legislature and to provide the mechanism for the state to qualify for federal funds that will provide financial assistance to water systems for the construction of eligible drinking water facilities.

This proposed rule meets the exceptions listed in R.S. 30:2019 (D) (3) and R.S.49:953 (G) (3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

A public hearing will be held on November 24, 1997, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (504) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by WP027. Such comments must be received no later than December 1, 1997, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (504) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. You may contact the Investigations and Regulation Development Division at (504) 765-0399 for pricing information. Check or money order is required in advance for each copy of WP027.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

Linda Korn Levy
Assistant Secretary

Title 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality Regulations

Chapter 22. Drinking Water Revolving Loan Fund

§2201. Introduction

A. The Department of Health and Hospitals, Office of Public Health (OPH), is the state agency within Louisiana granted primary enforcement responsibility from the EPA to ensure that public drinking water systems within the state are in compliance with state regulations that are no less stringent than federal drinking water regulations adopted in accordance with the Safe Drinking Water Act (SDWA) (42 U.S.C. 300f et seq.). The SDWA Amendments of 1996 authorized a state revolving loan fund program and grants to assist water systems in financing the costs of infrastructure improvements to achieve compliance with the SDWA.

B. In accordance with the Louisiana Constitution and authorizing legislation, the Department of Environmental Quality (the department) is assisting OPH in the financial administration of the Drinking Water Revolving Loan Fund (the fund). Regulations governing the fund program are promulgated by both OPH and the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR**.

§2203. Authority

These regulations provide for the Drinking Water Revolving Loan Fund as required by R.S. 30:2011 et seq. and in particular R.S. 30:2011.A(3), D(1); 2074.A(4),B(8); 2824.A; 2826.A, B, E, and F.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR**.

§2205. Definitions

The following terms used in these regulations shall have the following meanings:

Administrative Fee—the fee due from a borrower to the department at the origination of a loan and/or on the outstanding principal amount of a loan payable in installments at such rate or rates and at such time or times as may be established by the secretary.

Applicant—any person, as defined, that submits an application for financial assistance in accordance with these regulations.

Binding Commitment Agreement—an instrument evidencing a legal obligation by the department, acting on behalf of the state, to a person that sets forth terms for making a loan from the fund and/or providing such other financial assistance as may be authorized in connection with the program.

Borrower—any person receiving financial assistance for the construction of a drinking water facility.

Completion Date—the date the operation of a completed project receiving financial assistance from the fund is initiated or capable of being initiated, whichever is earlier.

Construction—includes preliminary planning, engineering, architectural, legal, fiscal, and economic investigations and/or studies, surveys, designs, plans, working drawings, specifications, erection, building, acquisition, alteration, remodeling, improvement, or extension of the project.

Department—the Louisiana Department of Environmental Quality.

Drinking Water Facilities—facilities for the purpose of collecting, transporting, treating, storing, distributing, or holding drinking water.

Environmental Review—an assessment by the department of the environmental impact of a proposed project and assurances that the project will comply with all environmental laws and executive orders applicable to the project area.

Financial Assistance—loans, credit enhancement devices, guarantees, pledges, interest rate swap agreements, linked deposit agreements, and other financial subsidies authorized by law.

Fund—the Drinking Water Revolving Loan Fund established by the department in accordance with the Safe Drinking Water Act (SDWA) Amendments of 1996 and Act 480 of the 1997 Regular Session of the Louisiana Legislature.

Letter of Intent—a written notification of the intent of the applicant to participate in the fund program. The notification must include a request for financial assistance, the estimated amount of financial assistance, and an estimated construction schedule and document the authority of the applicant.

Loan or Loans—a disbursement of money made by the department from the fund to a person in accordance with a loan and pledge agreement.

Loan and Pledge Agreement—a contractual arrangement by and between a person and the state acting by and through the department, providing for a loan or loans to such person for the purpose of paying the eligible cost of a project or projects.

Operation, Maintenance, and Replacement (O,M,&R)—those functions that result in expenditures during the useful life of the drinking water facilities for materials, labor, utilities, and other items that are necessary for managing and maintaining the drinking water facilities to achieve the capacity and performance for which such works were designed and constructed, including replacement.

Person—any individual, partnership, firm, corporation, company, cooperative, association, society, trust, or any other business unit or entity, including any municipality, or state agency.

Project or Projects—the activities or tasks identified in a loan and pledge agreement for which a person has made a loan and may expend, obligate, or commit loan proceeds.

Secretary—the secretary of the Department of Environmental Quality.

State—the state of Louisiana or any agency or instrumentality thereof.

System Improvement Plan—the necessary plans and studies relating to the construction of a complete project of drinking water facilities.

User Charge—a charge or fee levied on users of drinking water facilities for the cost of operation, maintenance, and replacement. User charges may include other costs such as the repayment of debt incurred for the construction of the drinking water facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR**.

§2207. Eligibility for Participation

A. Letter of Intent. An applicant shall send a letter of intent to the department and OPH.

B. Eligible Projects. Financial assistance may be provided only for the construction of drinking water facilities as described in a system improvement plan approved by OPH. The department may consider criteria such as ownership, ability to repay, managerial capability, or other such criteria to determine the amount and type of financial assistance for a project.

C. Allowable/Eligible Costs. Allowable cost determinations, based on applicable law and regulations, may be made by OPH or the department, on a project-by-project basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR**.

§2209. Application Requirements and Loan Conditions

A. Limitation on Applications. An application shall only be funded after authorization from OPH and after meeting all of the department's requirements.

B. Application Package. The contents of the application package must contain all applicable information required by the department including, but not limited to, the following:

1. System Improvement Plan. The applicant will submit, through OPH, a system improvement plan consisting of those necessary plans and studies that directly relate to construction of drinking water facilities. The system improvement plan must contain enough information to allow the department to perform an environmental review.

2. Financial Information. The applicant is required to submit sufficient information to demonstrate its legal, institutional, managerial, and financial capability to ensure the construction, operation, and maintenance of the drinking water facilities and repayment of the loan, interest, and administrative fees.

3. Site Certificate. The applicant must submit a certificate executed by an attorney certifying that the applicant has acquired all property sites, easements, rights-of-way, or specific use permits necessary for construction, operation, and maintenance of the project described in the approved system improvement plan.

C. Loan Conditions. Loans for projects will be made only to eligible applicants that:

1. provide a fair and equitable user charge system that generates revenues sufficient to cover the costs of O,M,&R for the system;

2. agree to own, operate, and maintain the drinking water facilities so that such drinking water facilities will function properly as long as the loan and pledge agreement is in effect;

3. agree to properly maintain financial records, have periodic audits, and make these records available to the department, OPH, EPA, or their designees upon request;

4. commit to undertake the expenditure of loan proceeds for construction or other eligible project costs within six months after entering into a binding commitment agreement or such time frame as may be required by the department, provided that failure to start the expenditure of funds within one year after entering into a binding commitment agreement may result in the withdrawal by the department of all financial assistance;

5. agree to evidence the loan by a bond, note, or other form of evidence of indebtedness prescribed or approved by the department; and

6. agree to pay administrative fees imposed by the department to defray long term administrative costs associated with the fund program.

D. Loan Period. Loans shall be made for a period of time not to exceed 20 years from the completion date of the construction of a project, except for loans for projects for disadvantaged communities as defined by OPH that may have loan periods up to 30 years with approval of the department. Interim construction financing shall not exceed two years without written approval from the department and from OPH.

E. Loan Repayment. Loan repayments of the principal, administrative fees, and interest installments will be set by the department, with the first installment due no later than one year following the project's completion date. The department will establish the loan repayment schedule in the terms of the loan and pledge agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR**.

§2211. Events of Default and Remedies

The provisions for events of default and remedies will be specified in the loan and pledge agreement for each borrower receiving a loan from the fund. The secretary or the undersecretary of the department must approve all remedies for events of default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR**.

§2213. Miscellaneous

The department may take certain actions and require a borrower to take actions necessary to assure compliance by such borrower with requirements of the Internal Revenue Code of 1986, as amended, in connection with a loan from the fund. The borrower shall reimburse the department for any cost incurred by the department in connection with any such actions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR**.